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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Mt. Union, Huntingdon, Centre Hall, and
South Williamsport, Pennsylvania)

MB Docket No. 03-231
RM-10818

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FCC MAIL SECTION

NOTICE OF PROPOSED RULE MAKING

Adopted: November 12, 2003

Released: November 14, 2003

Comment Date: January 5, 2004

Reply Date: January 20, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by Megahertz Licenses, LLC ("Petitioner") requesting the deletion of Channel 292A at Huntingdon, Pennsylvania, the allotment of Channel 292A at Mount Union, Pennsylvania, and the modification of the license of Station WWLY(FM) accordingly. Petitioner also requests the substitution of Channel 258B1 for Channel 258A and the reallocation of that channel from Mount Union to Centre Hall, Pennsylvania, and the modification of the license of Station WXMJ(FM) accordingly. Petitioner is the licensee of Station WXMJ(FM), Mount Union, Pennsylvania, and is the licensee of Station WWLY(FM), Huntingdon, Pennsylvania. In order to accomplish these allotment changes, Petitioner further proposes to change the transmitter site for Station WZXR(FM), South Williamsport, Pennsylvania, operating on Channel 257A. Petitioner includes with its petition a letter of consent to that relocation.¹

2. Petitioner states that the reallocation of Channel 258B1, Station WXMJ(FM), from Mt. Union to Centre Hall would provide a first local service to Centre Hall. Petitioner further states that a first local service at Mt. Union could be preserved by reallocating Channel 292A, Station WWLY(FM), from Huntingdon to Mt. Union. Finally, Petitioner states that two full-service radio stations, WHUN(AM) and WLAK(FM), Channel 278A, will remain licensed to Huntingdon and will continue to serve that community.

3. In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.² The FM allotment priorities are: (1) first full-time aural service;

¹ The letter was signed by Barry Drake, President of South Williamsport Sabrecom, Inc., licensee of Station WZXR(FM).

² 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983).

(2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

4. This proposal warrants consideration because the proposed allotment would provide Centre Hall with a first local aural broadcast transmission service and would prevent the removal of the sole local service at Mt. Union. Centre Hall, which had a 2000 U.S. Census population of 1,079 persons, is a borough located in Centre County, Pennsylvania. Petitioner states that Centre Hall has an elected seven member borough council presided over by an elected mayor. Petitioner further states that Centre Hall provides fire, water, and sewage services to the community, and has its own post office and zip code (16828), its own elementary school, four churches, a Lions Club, a Women's Club, a Garden Club, the Centre Hall Farmers and Businessmen's Association, a branch facility of the county public library system, and numerous retail establishments.

5. Centre Hall is located within the State College, Pennsylvania, Urbanized Area, and the proposed allotment of Channel 258B1 at Centre Hall would allow the 70 dBu signal of Station WXMJ(FM) to cover 100 percent of that urbanized area. Mt. Union, the current allotment community for Channel 258A, Station WXMJ(FM), is not part of the State College Urbanized Area, nor does the existing 70 dBu signal of Station WXMJ(FM) cover any portion of an urbanized area. Because Station WXMJ(FM) would be moving into an urbanized area, we shall apply the requirements of *Tuck* in determining whether Centre Hall is entitled to preference as a first local service.³

6. In *Tuck*, the Commission specified the following three factors for evaluating a community's independence, in order to establish an allotment preference as a first local service: (1) signal population coverage, *i.e.*, the degree to which the proposed station will provide service to both the suburban community and the larger metropolis; (2) the size and proximity of the suburban community relative to the metropolis; and (3) the interdependence of the suburban community with the metropolis.⁴ Of these three factors, the most significant is the third.⁵ In its comments, Petitioner should supply information to establish that Centre Hall is sufficiently independent of State College to qualify for a first local service preference, consistent with the requirements set forth by the Commission in *Tuck*.

³ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). See also *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C.Cir. 1951).

⁴ In assessing the interdependence of the two communities, the Commission considers: (1) the extent to which community residents work in the larger metropolitan area, rather than the proposed allotment community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company, or its own zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. *Tuck* at 5378.

⁵ *Id.* See also *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, 6 FCC Rcd 6,580 ¶23 (M.M.Bur. 1991), *app. for rev. dismissed*, 12 FCC Rcd 8392 (M.M.Bur. 1997).

7. Petitioner also should provide further information regarding the gain and loss that each existing service area would experience if the changes proposed in the petition were adopted. While Petitioner supplied some gain and loss figures for the proposed allotment changes, we believe that more specific information is necessary for full consideration of the proposals. Petitioner should state both the gain and loss in the area and population served for each of the stations involved. In addition, as to the loss figures, Petitioner should state, separately for each station's existing service area, the number of persons who would be left with: (a) four aural broadcast services, (b) three aural broadcast services, (c) two aural broadcast services, (d) one aural broadcast service, and (e) no aural broadcast service. Correspondingly, Petitioner should state, separately for each station's proposed service area, the number of persons who would gain: (a) a first aural broadcast service, (b) a second aural broadcast service, (c) a third aural broadcast service, (d) a fourth aural broadcast service, and (e) a fifth aural broadcast service. For Mt. Union, the existing service area of Channel 258A should be compared with the service area of proposed Channel 292A, in order to demonstrate the potential effects of the proposals on service to Mt. Union and its surrounding areas.

8. The proposed allotments could be made with the site restrictions and reference coordinates indicated below. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Huntingdon, Mount Union, and Centre Hall, Pennsylvania:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Huntingdon, Pennsylvania	278A, 292A	278A
Mount Union, Pennsylvania	258A	292A
Centre Hall, Pennsylvania	---	258B1

Proposed Coordinates for Channel 292A at Mount Union, Pennsylvania: 40-15-18 NL and 77-51-41 WL, with a site restriction of 14.5 km (9.0 miles) south of Mount Union.

Proposed Coordinates for Channel 258B1 at Centre Hall, Pennsylvania: 40-46-39 NL and 77-49-26 WL, with a site restriction of 14.0 km (8.7 miles) southwest of Centre Hall.

Proposed New Coordinates for Channel 257A at South Williamsport, Pennsylvania: 41-14-06 NL and 76-51-02 WL, with a site restriction of 12.5 km (7.8 miles) east of South Williamsport.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

10. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before January 5, 2004, and reply comments on or before January 20, 2004, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on counsel for the

Petitioner, as follows:

Allen G. Moskowitz
Kaye Scholer LLP
901 Fifteenth Street, N.W., Suite 1100
Washington, D.C. 20005
(Counsel for Petitioner)

11. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. An envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

13. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the Petitioner constitutes an *ex parte* presentation and shall not be considered in the

proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Assistant Chief, Audio Division
Media Bureau**

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. The proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the Petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.